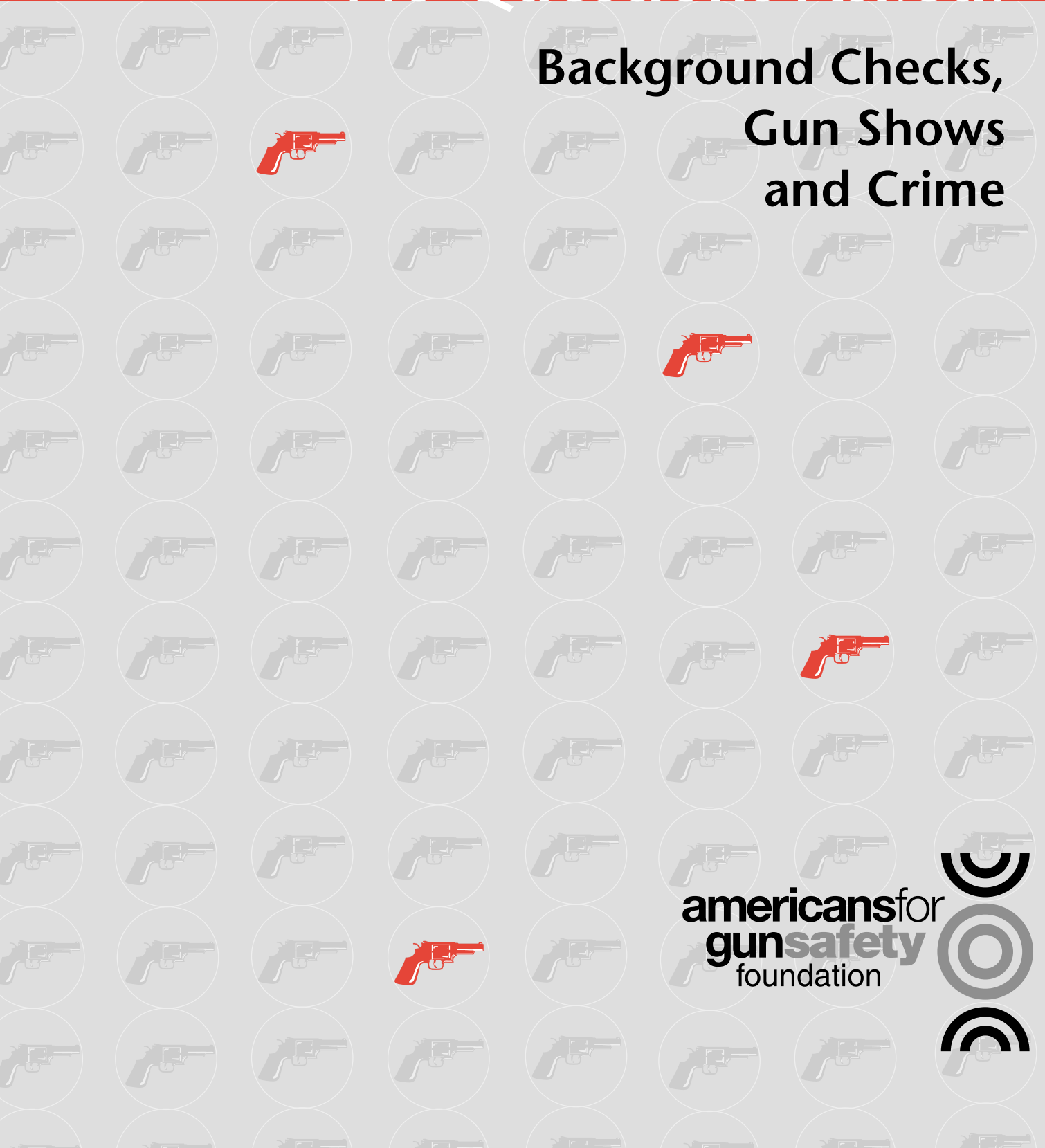


# No Questions Asked:

## Background Checks, Gun Shows and Crime



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# **No Questions Asked: Background Checks, Gun Shows and Crime**

**A Report by Americans for Gun Safety Foundation**

**April 2001**

## Introduction

In 1993, with the passage of the Brady Law, Congress enacted a dual standard for gun purchases – one standard for licensed gun stores and a separate standard for unlicensed sellers. The practical impact: Sales at gun stores require background checks; sales at gun shows by unlicensed sellers do not.

In 1999, Congress – concerned about criminals getting guns at gun shows -- debated legislation to require criminal background checks at gun shows. At that time, each side was largely arguing blind. Scant information was known about how often criminals obtained guns from gun shows. During the Senate debate, legislators could only guess how long most background checks took to complete under the National Instant Check System (NICS), and even some basic questions such as whether background checks would put gun shows out of business were debated with little information. This report, issued by Americans for Gun Safety Foundation, seeks to answer those questions.

Because of the nature of record-keeping laws governing the sale of guns among private individuals and even concerning the sale of guns from federally licensed dealers, data on gun shows has been sparse. For example, the National Association of Arms Shows gives a wide estimate of between 100,000 and 300,000 guns sold at gun shows each year. But they readily acknowledge that those estimates significantly undercount guns sold by licensed dealers at gun shows who represent between 50% and 75% of the vendors at arms events. However, by using a combination of sources, including gun trace data from the Bureau of Alcohol, Tobacco and Firearms, reports by the General Accounting Office and the Departments of Justice and Treasury, news reports from wire services, information from gun show publications, and data obtained from the internet sites of the National Rifle Association and the National Association of Arms Shows, certain definite patterns and conclusions emerge.

After looking at the available data, this report concludes that: criminals have easy access to guns at gun shows; states that have chosen to leave open this loophole are the leading crime gun export states; and a federal law requiring background checks on all sales at gun shows would not impede gun show business in any way.

*The report did not find any evidence justifying a national policy that continues to allow criminals all-too-easy access to guns at gun shows.*

# Summary of Findings and Conclusions

The study has three major findings:

1

**States that do not require criminal background checks at gun shows are flooding the nation with crime guns.**

- Nine of the ten states that supply the most crime guns to out-of-state criminals do not require background checks at gun shows.
- In every state that traced at least 500 crime guns in 1999, most, if not all of the top sources of out-of-state crime guns were states that do not require background checks at gun shows.
- There is a significant difference in the gun trafficking patterns among criminals in states that have closed the gun show loophole and states that have not.
- Nearly half of the guns traced to crimes committed in states that require background checks at gun shows originally were bought in other states.
- Comparatively, less than one-quarter of the guns traced to crimes committed in states where background checks at gun shows are not required originally were bought in other states.

2

**Since passage of the Brady Law, investigations point to gun shows as a major crime gun source.**

- According to the Bureau of Alcohol, Tobacco and Firearms, from 1996 to 1998, gun shows were the nation's second leading source of guns recovered in illegal gun trafficking investigations, accounting for 26,000 illegal firearms.

There is also extensive local evidence:

- A 15-month investigation of Arizona gun shows (triggered by a gun being sold to a convicted murderer) uncovered more than 1,500 illegally sold firearms.
- Portland, Oregon police found that 73 of 265 traceable guns taken from local gang members between 1996 and 1998 were bought at gun shows.
- In March 2001, investigators in Kentucky and Indiana arrested 16 people and confiscated 1,000 firearms as part of an 18-month investigation into illegal gun trafficking. Undercover agents retrieved many of the guns at flea markets and gun shows.

# 3

## **Closing the gun show loophole does not adversely affect the gun show business.**

- Of the five states that host the most gun shows, three of them – Pennsylvania, Illinois and California – currently require criminal background checks for all sales or at least a firearms ID card to purchase a gun.
- NICS is virtually instant. 72% of background checks are completed within several minutes, 95% within two hours, and only one in thirty background checks last more than a day, according to two government studies. Those potential buyers not approved in a day are 20 times more likely to be rejected for having a felony or other disqualifying record than those whose background check is concluded within 24 hours.
- Between 50% and 75% of firearms vendors at gun shows are licensed dealers who already must perform background checks under the law.

## **Conclusion:**

Since the mid-1990s, when Brady background checks made it difficult for criminals to directly obtain guns at licensed gun stores, criminals have been forced to rely on the underground secondary market where background checks can be avoided. The secondary market includes straw purchasers (essentially individuals who buy a gun specifically to sell or give to someone who is a prohibited buyer), gun shows and flea markets.

This report shows that gun shows are a major part of this secondary market and are often a ready source for criminals to obtain guns. States that do not require background checks not only make it easier for local criminals to acquire guns, but effect all states by making it easier to traffic illegal weapons. In short, this report demonstrates that requiring background checks at gun shows will not affect the millions of enthusiasts who attend gun shows each year but is clearly an essential part of a comprehensive strategy to make it harder for criminals to get guns.

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## What is the Gun Show Loophole?

Under the Brady Law, licensed gun stores are required to perform criminal background checks on all buyers, but unlicensed vendors – essentially private individuals who buy and sell guns – are not required to perform background checks. Because the Brady background check effectively stopped criminals from directly buying guns at licensed gun stores, criminals have had to find other ways to acquire guns. At gun shows, large numbers of private buyers and sellers come together in one place and sell guns, often where no background check is required. The 106th Congress debated the scope and severity of this loophole, and the 107th Congress is expected to do the same.

According to a government report that cites the Krause Gun/Knife Show Calendar (the leading source of information on gun show schedules), there were 4,442 gun shows in 1998, not including flea markets where guns may have been sold.<sup>1</sup> The latest issue of the quarterly Krause Gun/Knife Show Calendar lists 850 gun shows in 45 states.<sup>2</sup> Since sales in the secondary market are not reported, it is not known how many guns are sold at gun shows each year. But a survey of gun owners' buying habits conducted for the Police Foundation indicated that, on average, about 280,000 guns were bought annually at gun shows and flea markets in 1993 and 1994.<sup>3</sup> The National Association of Arms Shows

(NAAS) estimates a wide range of between 100,000 and 300,000 guns, but NAAS readily admits that its estimate significantly undercounts the number of guns sold by licensed dealers.<sup>4</sup> Perhaps the best estimate of the commerce at gun shows comes from the NAAS website, which refers to the "multi-billion dollar firearms show industry."<sup>5</sup>

A large gun show may include as many as 3,000 different vendors, both licensed sellers and private sellers. The typical gun show hosts between 500 and 1,000 vendors, though not all vendors sell guns. Vendors usually pay about \$50 to rent a table for a 2-day show, and visitors pay about \$5 for admission. Typically, gun show attendance for a weekend event falls between 2,500 and 5,000 guests (according to NAAS), meaning that annual gun show attendance numbers in the millions.

The Bureau of Alcohol, Tobacco and Firearms (ATF) estimates that as many as one-fourth of all firearms vendors at gun shows are unlicensed and therefore are under no federal requirement to perform background checks on buyers. An unlicensed seller is anyone who is selling a gun but who does not have a federal firearms license or does not sell for business – which is a very loose definition. There is no limit on the number of guns an unlicensed seller may sell.

[1] U.S. Departments of Justice and Treasury, "Gun Shows: Brady Checks and Crime Gun Traces," January 1999

[2] Krause Publications, Gun/Knife Show Calendar, January-February-March 2001

[3] Philip Cook and Jens Ludwig, "Guns in America: Results of a Comprehensive National Survey on Firearms Ownership and Use," 1996

[4] National Association of Arms Shows, phone interview, March 2001

[5] National Association of Arms Shows, [www.arms-show.org](http://www.arms-show.org)

# Thirty-two states have not closed the gun show loophole

**E**ighteen individual states have passed laws requiring background checks at gun shows, or at least require a permit or firearms ID card to purchase a firearm. Most recently, Oregon and Colorado overwhelmingly passed statewide referenda closing the gun show loophole.

In the remaining thirty-two states, private sellers may sell guns without performing a criminal background check.

## No Questions Asked: The 32 States that do not require background checks for all sales at gun shows.

*The following states impose no requirement for background checks between private buyers and sellers at gun shows.*

- |             |                |
|-------------|----------------|
| Alabama     | Nevada         |
| Alaska      | New Hampshire  |
| Arizona     | New Mexico     |
| Arkansas    | North Dakota   |
| Delaware    | Ohio           |
| Florida     | Oklahoma       |
| Georgia     | South Carolina |
| Idaho       | Tennessee      |
| Indiana     | Texas          |
| Iowa        | Utah           |
| Kansas      | Vermont        |
| Kentucky    | Virginia       |
| Louisiana   | Washington     |
| Maine       | West Virginia  |
| Mississippi | Wisconsin      |
| Montana     | Wyoming        |

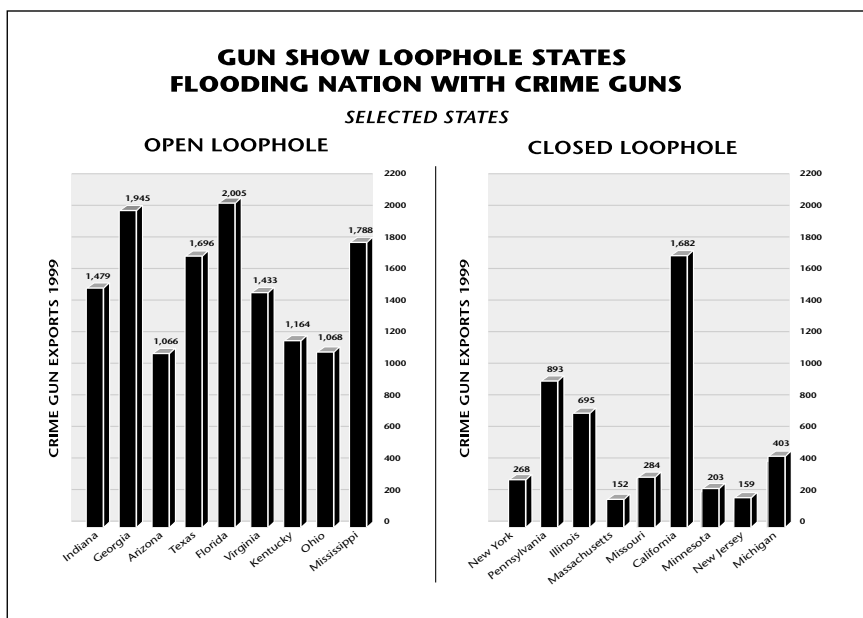
## Finding #1

### States that DO NOT require background checks at gun shows are flooding the nation – and often other states that DO require such checks – with crime guns

Proponents of closing the gun show loophole contend that unlicensed sellers at unregulated gun shows are supplying criminals and straw buyers with guns that quickly make their way through the black market and into the hands of criminals. ATF's gun trace data for crimes committed in 1999 supports this theory.<sup>6</sup>

- On average, states that do not require background checks at gun shows are the source of 61% more out-of-state crime guns (guns that are traced to crimes committed across state lines) than are states that have closed the gun show loophole.
- Even more compelling, of the ten states that are the source of the most out-of-state crime guns, nine do not require criminal background checks at gun shows.
- Each of the top four crime gun source states – Florida, Georgia, Mississippi, and Texas – do not require background checks at gun shows. Only California, which ranks fifth in the nation as a source of out-of-state crime guns, has closed the gun show loophole.

- In 1999, twelve states were the source of at least 1,000 out of state crime guns, and only two of those states – California (1,682 gun traces) and North Carolina (1,044 gun traces) – require either background checks or a permit to purchase at gun shows.
- Rounding out the top twelve crime gun source states are ten states that do not require background checks at gun shows - Florida (2,065 gun traces), Georgia (1,945), Mississippi (1,788), Texas (1,696), Indiana (1,479), Virginia (1,433), Kentucky (1,164), Ohio (1,068), Arizona (1,066) and Alabama (1,060).



Source: Bureau of Alcohol Tobacco and Firearms

[6] Bureau of Alcohol, Tobacco and Firearms trace data for 1999 (all statistics from this section utilize raw trace data for crimes committed in each state in 1999)

For the purposes of this section, Colorado and Oregon are included among states that have not closed the gun show loophole as each state changed its laws in 2000.



## Where do criminals get guns?

Criminals in states that do not require background checks at gun shows get most of their guns locally. Conversely, criminals in states that have closed the gun show loophole are more often forced to go out-of-state to get their guns and seem to acquire them mostly from states that have not closed the gun show loophole.

For example, in New York State, where background checks at gun shows are required, two-thirds of the guns traced to crimes committed in New York came from out-of-state. And of the five states that supplied the most guns to New York criminals, four do not require background checks at gun shows.

Similarly, 53% of guns traced to Missouri crimes came from out-of-state. Like New York, of the five states that supplied the most guns to Missouri criminals, four do not require background checks at gun shows.

Conversely, in Georgia and Florida, which do not require background checks at gun shows, four-fifths of the guns traced to crimes committed in those states were bought in state. In Indiana, which has not closed the gun show loophole, 89% of the guns traced to crimes committed there were bought locally.

Thus, there appears to be more than a coincidental link between states that do not require gun show background checks and their likelihood of being a crime gun exporter. In each of the 30 states that traced more than

500 crime guns in 1999, at least three of the top five source locations of out-of-state guns were states that do not require background checks at gun shows. In eight of these states, all five leading sources of out-of-state crime guns do not require background checks at gun shows. In 17 states, four of five of the leading sources of out-of-state crime guns do not require background checks at gun shows.

### Where do criminals get their guns? <sup>7</sup>

	In-State	Out-of-State
Gun Show Loophole Closed	56%	44%
Gun Show Loophole Open	76%	24%

Nationally, among states that have closed the gun show loophole, 44% of the guns traced to local crimes were originally sold in another state. But in states that do not require background checks at gun shows, only 24% of the traces came from outside of the state where the crime was committed.

**States that do not require gun show background checks are far more likely to export crime guns to other states.**

Clearly, requiring background checks at gun shows forces criminals to either go out-of-state more often to acquire their guns, employ straw buyers, or to acquire guns from traffickers who bring guns in from other states.

[7] Bureau of Alcohol, Tobacco and Firearms trace data for 1999

## Finding #2

### Investigations point to gun shows as major crime gun source

**T**here is no dispute that a large secondary market exists for crime guns. According to a November 2000 ATF report, “89% of traced crime guns changed hands at least once before recovery by law enforcement as crime guns.”<sup>8</sup> This report, based on 64,637 successful crime gun traces, indicates the existence of a vast secondary market in crime guns. The report does not analyze which secondary sources – straw purchasers, gun shows, flea markets, or stolen guns – supplied guns to criminals.

However, opponents of legislation to close the gun show loophole argue that although the secondary market in crime guns is large, criminal access to guns at gun shows is rare.

#### **Gun shows and flea markets were the second leading source of guns in trafficking investigations.**

On its website, the National Rifle Association cites a National Institute of Justice study from the 1980s that states “gun shows were such a minor source of criminal gun acquisition that they were not even worth reporting as a separate figure.”<sup>9</sup> But this argument is severely dated and misleading. Before 1994, federal law did not require background checks even at licensed gun stores. That means there was no need for convicted felons or other prohibited buyers to go to a gun show instead of a gun store to evade a background check.

The NRA also cites a 1997 Michigan State University graduate student paper which surveyed 504 incarcerated youthful offenders. Of the 310 incarcerated offenders reporting having ever owned or possessed a firearm, 3.2% reported obtaining the firearm from a gun show or flea market.<sup>10</sup> Leaving aside the question of whether a survey of one local group of young criminals can be extrapolated as a national trend, 49% of the prisoners identified the black market, street or fence as the last seller, and the survey did not inquire whether the original seller had obtained the gun from a gun show, flea market, or licensed gun store.

In contrast, the most definitive study, a June 2000 ATF report entitled “Following the Gun: Enforcing Federal Laws Against Firearms Traffickers,” identified gun shows and flea markets as the second leading source of firearms recovered in illegal gun trafficking investigations.

The study, which analyzed 1,530 gun trafficking investigations undertaken between July 1996 and December 1998, uncovered 25,862 illegal firearms that came from gun shows and flea markets.<sup>11</sup> Gun shows and flea markets were the second leading source of guns in trafficking investigations (behind corrupt gun store and pawnshop dealers). And the typical case involved 131 illegal firearms obtained from gun shows and flea markets. Bolstering this thorough study, a review of

[8] Bureau of Alcohol, Tobacco and Firearms, “Crime Gun Trace Reports,” November 2000

[9] National Rifle Association, [www.nra.org](http://www.nra.org)

[10] Sean Varano, Tracy O’Connell, Todd Bietzel, Timothy Bynum, “Patterns in Gun Acquisition and Use by Incarcerated Youthful Offenders in Michigan,” Michigan State University, 1998

[11] Bureau of Alcohol, Tobacco and Firearms, “Following the Gun: Enforcing Federal Laws Against Firearms Traffickers,” June 2000

recent news wire reports indicates that beyond the ATF study and such high profile crimes as the mass shooting at Columbine High School in Colorado, gun shows are frequently mentioned as a source of crime guns. For example:

- In February 2001, a 15-month investigation of Arizona gun shows that began when law enforcement witnessed a convicted murderer buying a gun from an unlicensed seller resulted in 1,584 seized crime guns.<sup>12</sup>
  - A Tucson vendor sold guns to a Hispanic undercover federal agent after being told the weapons were being smuggled into Mexico.
  - One vendor was found to possess 70 guns that had been used in homicides, domestic violence cases, and other crimes.
  - 31 dealers were arrested and charged with various firearms violations including illegal gun trafficking.
- Over a two-year period, Portland police confiscated several hundred guns from area gang members. 73 of the 265 successful traces indicated that the guns originated from gun shows. At the time, Oregon had not yet closed the gun show loophole.<sup>13</sup>
- A reporter writing a December 2000 Dayton Daily News exposé on gun shows bought a gun without a background check and within fifteen minutes received eight offers to buy the gun from other gun show attendees. A plainclothes detective invited to observe said most, if not all, of the eight probably had criminal records.<sup>14</sup>
- In March 2001, investigators in Kentucky and Indiana arrested 16 people and confiscated 1,000 firearms as part of an 18-month investigation into illegal gun trafficking. Undercover agents retrieved many of the guns at flea markets and gun shows, and the stash included guns with obliterated serial numbers, sawed-off shotguns and fully automatic weapons.<sup>15</sup>
- In February 2001, 80 guns were stolen from a gun show in Oklahoma City. Among the stolen guns was at least one Uzi semiautomatic assault weapon.<sup>16</sup>

**A reporter writing a December 2000 Dayton Daily News exposé on gun shows bought a gun without a background check and within fifteen minutes received eight offers to buy the gun from other gun show attendees.**

[12] Arizona Republic, "Gun Shows, Swap Meets Targeted," Dennis Wagner, February 11, 2001

[13] City of Portland, Bureau of Police, 1996-1998 memorandum on gang investigations

[14] Dayton Daily News, "Four minutes, zero questions, 1 handgun," Mike Wagner and David Gulliver, December 12, 2000

[15] Associated Press, "Sixteen Arrested on Gun Trafficking Charges," March 8, 2001

[16] KOCO-TV, Oklahoma, February 19, 2001

## Finding #3

### Background checks have little impact on the operation of gun shows

**D**uring the 1999 congressional debates about closing the gun show loophole, one of the most frequent concerns voiced by those who opposed the legislation was that by requiring background checks that could take up to three days to complete, weekend gun shows could be put out of business.

In the eighteen states that have closed the gun show loophole, this concern has been proven invalid. In fact, there is virtually no difference in the number of gun shows between states that require background checks at gun shows and those that do not.

- Of the five states that hosted the most gun shows in 1998, three states – Pennsylvania, Illinois, and California – require background checks or at a minimum, a firearms ID card to purchase a gun. These 3 states account for 14% of the nation's gun shows, according to the Krause Gun/Knife Show Calendar.<sup>17</sup>
- The number of gun shows scheduled so far this year in states that require background checks averages 22 compared to an average of 24 scheduled gun shows in states that do not require background checks, according to the latest quarterly edition of the Krause Gun/Knife Show Calendar.<sup>18</sup>

The reason that background checks have so little impact on the operation of gun shows is likely two-fold: 1) the vast majority of buyers and sellers at gun shows are simply gun enthusiasts, collectors, and sportsmen who have nothing to fear from a background check; and 2) most background checks are completed rapidly, so nearly all transactions that take place at gun shows can be concluded on the premises.

Since 1998, there is no longer a mandatory federal waiting period before an individual can purchase a handgun or long gun. The five business day waiting period under the Brady Law was phased out in favor of a National Instant Check System (NICS) that determines quickly whether an individual is a legal or a prohibited buyer. Prohibited buyers include those with a felony conviction record, a violent domestic abuse misdemeanor conviction, a dishonorable discharge from the military, or mental incompetence, among other categories. Under NICS, buyers are eligible to receive a gun as soon as the background check is completed or after 3 business days if the background check has not been completed.

**Of the five states that hosted the most gun shows in 1998, three states require background checks.**

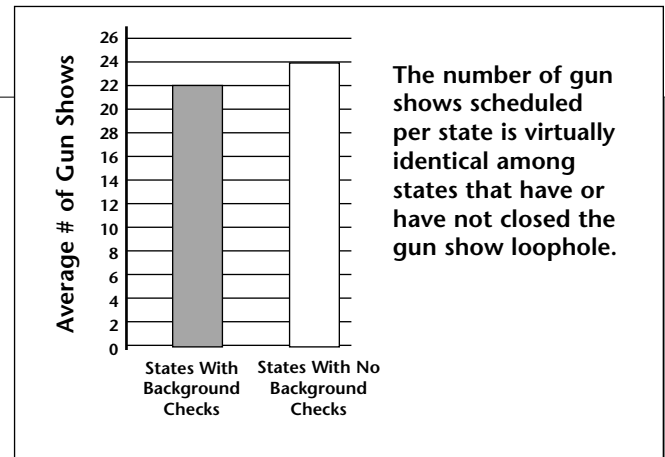
[17] U.S. Departments of Treasury and Justice, "Gun Shows: Brady Checks and Crime Gun Traces," January 1999

[18] Krause Publications, Gun/Knife Show Calendar, January-February-March, 2001

Two government studies show that nearly all buyers are cleared to purchase a gun (or are definitively barred) within two hours. Moreover, the longer a background check takes to complete, the more likely the buyer is prohibited from purchasing a gun. According to both the General Accounting Office and the National Institute of Justice:

- 72% of NICS checks are completed within several minutes.<sup>19</sup>
- 95% of NICS checks are completed within two hours.
- 96.5% of NICS checks are completed within 24 hours.<sup>20</sup>
- The NICS checks that take more than two hours are twenty times more likely to uncover a prohibited buyer than those completed within two hours.<sup>21</sup>

Any delay in completing NICS checks is usually because those administering the background check need time to determine whether a potential buyer who was arrested for a felony crime was actually convicted (a felony conviction is the most common reason a person is denied a handgun). This often requires manual searches of paper records, which greatly slows the process. Some states have done an excellent job of computerizing their criminal conviction records. North Carolina has automated 94% of its criminal history records – the most in the nation -- followed by Hawaii



(89%), Montana (85%), New Jersey (85%), New York (84%), South Dakota (84%), and Iowa (84%).

Other states have lagged far behind – Tennessee (6%), Indiana (6%), Colorado (12%), West Virginia (15%), Louisiana (24%) and Oklahoma (26%).<sup>22</sup> Computerizing these records is clearly necessary to keep criminals from passing a background check and getting guns. Quality background checks are the best line of defense against criminals getting easy access to guns at gun shows.

**Given the GAO and DoJ studies, and the hundreds of gun shows that occur every year in states that require background checks, there is no factual basis for the claim that background checks impair gun shows or put them out of business.**

[19] General Accounting Office, "Implementation of the National Instant Criminal Background System," February 2000

[20] U.S. Department of Justice, "National Instant Criminal Background Check System (NICS)," March 2000

[21] U.S. Department of Justice, "National Instant Criminal Background Check System (NICS)," March 2000

[22] U.S. Department of Justice, "Survey of State Criminal History Information Systems," October 2000

## **Conclusion:** A national requirement for background checks for all sales at gun shows and flea markets will help stop criminals from getting guns on the black market, reduce the interstate trafficking of guns, and will have little effect on gun show operators.

**T**he sheer volume of unlicensed sellers at the thousands of gun shows held each year is a huge loophole that is easily exploited by those who would be denied a gun if background checks were required. While it may have been true that gun shows were not a major source of crime guns in the past, the passage of the Brady Law created a different standard for background checks between gun shows and gun stores. Pre-Brady criminals could just as easily get their guns at gun stores.

Recent investigations indicate that gun shows have become a major source for illegal gun traffickers. And previous reports on gun traces indicate that nearly every gun used in a crime changed hands at least once before being recovered by law enforcement. Thus, reducing the number of guns that can be obtained without a background check in the secondary market is a necessary and sound strategy to make it harder for criminals to get guns – and it can be done without slowing legitimate gun show business or unduly burdening legitimate gun buyers.

Because the National Instant Check System works so quickly, requiring background checks would have little, if any, negative effect on legitimate commerce at gun shows. Indeed, three of the five states that host the most gun shows already require criminal background checks.

Gun shows are by no means the only places where illegal gun traffickers and criminals are able to obtain guns, but the lack of background checks has made gun shows an obvious and often exploited source for criminals to obtain guns that has an impact, not just in those states, but nationally as well.

This report highlights the problem of all-too-easy access that gun shows present to criminals when they do not require background checks for all sales. Requiring background checks at gun shows would create parity between gun stores and gun shows, making it harder for criminals to get guns while ensuring that gun shows are frequented by law abiding citizens only.

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The Americans for Gun Safety Foundation is a non-profit, non-partisan organization that seeks to educate the public about supporting the rights of individuals to own guns and on the need for better laws and stronger enforcement of existing laws to help keep guns out of the hands of criminals and children.

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